

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES

ISSUED BY STATE BOARD OF ACCOUNTS

December 2006

YEAR END DUTIES

The following is a listing of duties and reports that occur each year end. Some of the articles have been published in this issue.

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PAYMENT FOR STREET LIGHTING FROM MOTOR VEHICLE HIGHWAY FUND

In Official Opinion No. 20 of 1950 the Attorney General held that if the installation of ornamental street lighting is a matter of traffic safety, it is within the permission of the statute. Whether it is a matter of traffic safety is a question of fact to be determined in each instance from all the surrounding facts and circumstances.

Based upon the foregoing, it is our audit position that if in the written opinion of a city or town attorney it is held that street lighting is a matter of traffic safety, we would not take exception to a city or town using motor vehicle highway funds for such purpose.

SOCIAL SECURITY TAX BASE CHANGES JANUARY 1

The 2007 contribution rate will remain at a total of 15.3 percent. The tax rate for both employees' and employers' shares for 2007 will be 7.65 percent (6.2% of Social Security and 1.45% Medicare).

We further understand that the maximum amount of earnings that will be subject to Social Security contributions will be raised from \$94,200 to \$97,500 effective January 1, 2007.

Please contact the Internal Revenue Service at 1-800-829-1040 if you should have any questions on this matter.

NEW FEDERAL MILEAGE RATE

It is our understanding that effective January 1, 2007, the Federal mileage rate will be raised from 44½ cents to 48½ cents per mile. The State rate for mileage is 40 cents per mile.

CANCELLATION OF WARRANTS – OLD OUTSTANDING CHECKS

Pursuant to IC 5-11-10.5, all checks outstanding and unpaid for a period of two years as of December 31 of each year are void.

Not later than March 1 of each year, the clerk-treasurer shall prepare, or cause to be prepared, a list in duplicate of all checks outstanding for two or more years as of December 31 last preceding. The original copy shall be filed with the city or town council and the duplicate copy maintained by the clerk-treasurer of the city or town. The clerk-treasurer shall enter the amounts so listed as a receipt to the fund or funds upon which they were originally drawn and remove the checks from the list of outstanding checks. If the fund from which the check was originally drawn is not in existence or cannot be ascertained, the amount of the outstanding check shall be receipted into the general fund of the city or town.

ENCUMBERED APPROPRIATIONS – BALANCE AVAILABLE

With the opening of a new budget year and a new set of ledgers, it is to the advantage of a municipality to review the unpaid purchase orders and contracts which remain on the ledgers as "encumbered."

Unpaid purchase orders and those items under contract are to be added for each appropriation account and the total carried to the new 2007 corresponding account. The actual unpaid amount of the purchase orders or contracts should be totaled and shown as a separate amount on the appropriation ledger sheet for 2007, with proper explanation, and added to the 2007 appropriation for the same purpose. By properly carrying out this procedure, the 2007 budget will not be expected to stand any expense not anticipated in making the budget.

We suggest the proper officials of the city or town make a listing of these encumbered items and make it part of their minutes in their last business meeting of the year. The Department of Local Government Finance should be sent a copy of the listing.

Keep in mind the appropriations encumbered and carried forward can be used for no other purpose other than the purchase order or the contract for which they were appropriated.

DORMANT FUND BALANCES-TRANSFERS AUTHORIZED

IC 36-1-8-5 gives city and town councils authority to order the transfer to the general fund or rainy day fund any unused and unencumbered balance in any fund raised by a general or special tax levy, the purposes of which have been fulfilled. This action may be taken by a city or town council at any public meeting.

IC 36-1-8-5 states in part:

“(a) This section applies to all funds raised by a general or special tax levy on all the taxable property of a political subdivision.

(b) Whenever the purposes of a tax levy have been fulfilled and an unused and unencumbered balance remains in the fund, the fiscal body of the political subdivision shall order the balance of that fund to be transferred as follows, unless a statute provides that it be transferred otherwise....(2) Funds of a municipality, to the general fund or rainy day fund of the municipality.”

ANNUAL OPERATIONAL REPORT OF LOCAL ROAD AND STREET OPERATIONS

Indiana Code 8-17-4.1 requires an operational report shall be prepared by all cities and towns having a population of 20,000 or more with road and street responsibilities. The report shall be prepared on forms prescribed by the State Board of Accounts and must disclose all information considered necessary to reflect the financial condition and operations of the department.

A copy shall be filed with the State Board of Accounts, the governing body of the municipality, LTAP, and the Planning Division of the State Department of Transportation by June 1 of the year next following the operational report year. The report shall also be made available to the public and to the press.

The annual operational report shall be prepared and filed on City and Town Form No. 225. A copy of the report will be furnished to all affected city and town offices by the State Board of Accounts in January.

REPORT OF NAMES, ADDRESSES, DUTIES AND COMPENSATION OF PUBLIC EMPLOYEES

All cities and towns must file with the State Examiner, State Board of Accounts, 302 West Washington Street, Room E418, Indianapolis, Indiana 46204, on or before January 31, Form 100-R, Certified Report of Names, Addresses, Duties and Compensation of Public Employees. This report is required by IC 5-11-13. A supply of this form must be secured from your public printer. The State Board of Accounts does not supply this form. If a computer printout can supply all of the required information, it can be submitted in lieu of the Form 100-R as long as it contains the certificate section on the last page of the form. Only the business address of each officer or employee listed is to be included on the form.

RATES FOR PUBLIC NOTICE ADVERTISING

The rates published on pages 10 through 12 in the December 2004 issue of the Cities and Towns Bulletin will remain in effect for 2007.

ATC EXCISE TAX

IC 7.1-4-9 requires all license fees paid in connection with the issuance of a beer retailer's permit, a beer dealer's permit, a liquor retailer's permit, a supplemental caterer's permit, a liquor dealer's permit, a wine retailer's permit and a wine dealer's permit that are received by the Alcohol and Tobacco Commission are to be deposited with the treasurer of state for deposit into an excise fund. Thirty-three percent (33%) of the moneys in the excise fund shall be paid into the general fund of the treasury of the city or town in which the retailer's or dealer's licensed premises are located and shall be budgeted according to law.

Distribution of the ATC Excise Tax shall be made by the auditor of state semiannually on the first day of June and first day of December of each year.

ATC GALLONAGE TAX

IC 7.1-4-7 requires the Alcohol and Tobacco Commission to deposit four cents (\$0.04) of the beer excise tax collected on each gallon of beer or flavored malt beverage; one dollar (\$1) of the liquor excise tax collected on each gallon of liquor; twenty cents (\$0.20) of the wine excise tax collected on each gallon of wine; the entire amount of malt excise tax collected, and the entire amount of hard cider excise tax collected into the state general fund for distribution to the state (50%) and cities and towns (50%).

The sum set aside for cities and towns shall be allocated to a city or town based upon the basis that the population of the city or town bears to the total population of all cities and towns of the state.

The auditor of state shall, on the first day of April of each year and quarterly thereafter, distribute these amounts to the general fund of the treasury of the city or town.

STATE DISTRIBUTIONS

The following is a listing of the state distributions which most cities and towns receive along with the applicable state account number, account name, frequency of distribution, and city and town fund to which the distribution should be receipted:

<u>State Account Number</u>	<u>Account Name</u>	<u>Distribution</u>	<u>City or Town Fund</u>
3010/579800/105200	Motor Vehicle Highway	Monthly	Motor Vehicle Highway
6250/579800/130000	Local Road and Street	Monthly	Local Road and Street
6000/579800/185500	ATC Excise (Permit Fees)	Semiannual	General
1000/579800/191200	ATC Gallonage	Quarterly	General

STATE DISTRIBUTIONS – (Continued)

<u>State Account Number</u>	<u>Account Name</u>	<u>Distribution</u>	<u>City or Town Fund</u>
3160/579800/192000	Cigarette Tax-General	Semiannual	General
3160/579800/192200	Cigarette Tax – CCI	Semiannual	Cumulative Capital Improvement
3940/579800/192500	Accelerated MVH #1	Monthly (1)	Motor Vehicle Highway
3940/579800/192600	Accelerated MVH #2	Monthly (1)	Motor Vehicle Highway

(1) These distributions will be received in August, September, October and November or until the state has accumulated \$25,000,000.

Any questions should be directed to the Settlement Deputy of the Auditor of State's office at (317) 232-3309.

CONSTRUCTION OF SIDEWALKS

Following is a listing of funds and appropriations from which costs of constructing sidewalks adjacent to city and town streets may be paid.

1. Current appropriation in the city or town general fund;
2. Voluntary contributions from property owners;
3. Current appropriation of proceeds from a general obligation bond issue which will be retired over a period of years by general taxation;
4. Current appropriation in the (Municipal) Cumulative Capital Development Fund if approved as one of the fund purposes (IC 36-9-15.5);
5. Current appropriation in the Cumulative Capital Improvement Fund (tax levy) [IC 36-9-16];
6. Current appropriation in the Cumulative Capital Improvement Fund (cigarette taxes) [IC 6-7-1-31.1];
7. Current appropriation in the Cumulative Street Fund (IC 36-9-16.5);
8. Special assessment under the General Improvement Fund (IC 36-9-17);
9. Special assessment under the Municipal and County Barrett Law Fund (IC 36-9-36);
10. Special assessment under the Municipal Barrett Law Fund (IC 36-9-37);

CONSTRUCTION OF SIDEWALKS – (Continued)

11. Barrett Law Revolving Fund established pursuant to IC 36-9-37-46;
12. Special Assessment under the Municipal Improvement District Law (IC 36-9-38);
13. Current appropriation in the Motor Vehicle Highway Fund (IC 8-14-1-5 and Attorney General Official Opinion No. 64 dated November 22, 1965); and
14. Current appropriation in the Local Road and Street Fund (IC 8-14-2-5, IC 9-13-2-167, and Attorney General Official Opinion No. 64 dated November 22, 1965).

NOT FOR PROFIT CORPORATIONS-AUDITS OF FINANCIAL ASSISTANCE

The State Board of Accounts, or its designee, is responsible for the examination of the records and accounts of entities receiving financial assistance from governmental sources. Entities are defined as providers of goods, services, or other benefits that are maintained in whole or in part at public expense; or supported in whole or in part by appropriations or public funds by taxation. The definition does not include the State or municipalities but does include for-profit and non-for-profit corporations, and unincorporated associations and organizations. Financial assistance is defined as payments to entities in the form of grants, subsidies, contributions, aid, etc. [IC 5-11-1-9, IC 5-11-1-16(e)]

All contracts involving financial assistance between governmental units and entities must permit the examination and require reports as prescribed by IC 5-11-1.

IC 5-11-1-9 states, in part:

"....An examination of an entity deriving:

- (1) Less than fifty percent (50%); or
- (2) At least fifty percent (50%) but less than one hundred thousand dollars (\$100,000), if the entity is organized as a not-for-profit corporation;

of its disbursements during the period of time subject to an examination from appropriations, public funds, taxes and other sources of public expense shall be limited to matters relevant to the use of the public money received by the entity ..."

IC 5-11-4-3 (h) states that a municipality that contracts for services with a volunteer fire department may pay the cost of an examination or investigation of the volunteer fire department under this chapter.

This requirement is significant to cities and towns entering into contracts with certain organizations to provide services, i.e., historical societies, senior citizens organizations, volunteer fire associations, etc. Contracts with volunteer fire associations that provide for a flat amount of assistance would subject the volunteer fire department to an examination. An examination would not be required if the contract provides for reimbursement on a "per run" basis.

VENDING MACHINE COMMISSIONS

Historically in audits of cities and towns and other governmental units with vending machines, the State Board of Accounts has formed and followed these audit positions.

1. There should be a clearly defined procedure adopted by the governing body of the unit concerning placement, use, maintenance, and commissions of vending machines on their property.
2. All revenues generated and costs incurred in operating vending machines located on the unit's premises should be accounted for through the unit's records.
3. If vending machines are located in restricted (areas other than those available to the public) and if the unit's governing body wishes for those revenues to be restricted for the use and benefit of those employees who use the machines and generate the revenues, the State Board of Accounts will not take exception to such action in an audit. This decision must be authorized by ordinance (or resolution) of the proper legislative body of the unit.
4. If vending machines are located in areas where the public makes use of the machines and generates the resulting revenues, we have advised officials to place the revenues in the unit's operating fund for the benefit of the general public, the machine users. Any alternative procedure(s) would be reviewed and evaluated on a case by case basis during our audits. As stated in No.3, any alternative procedure(s) should be authorized by ordinance (or resolution) of the proper body.
5. In the event personnel other than the unit's personnel maintain, stock, and clean up around vending machines, we will not take audit exception when such persons are paid for these services. In this situation, a written agreement should be entered into listing the services to be rendered, the amount to be paid for such services, timing of payments, and any other areas deemed necessary by the contracting parties of the governing body of the unit.

PUBLIC CONSTRUCTION LAW – OVERVIEW

Whenever the cost of a public work project will be:

- (1) At least \$75,000 in:
 - a. A consolidated city or second class city; or
- (2) At least \$50,000 in any other city or town:

PUBLIC CONSTRUCTION LAW – OVERVIEW – (Continued)

The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. [IC 36-1-12-4(b) (1)] The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required. [IC 36-1-12-4(b)(2)] All plans and specifications for public buildings must be approved by the State Department of Health, the Division of Fire and Building Safety, and other state agencies designated by statute. [IC 36-1-12-10] Upon filing of the plans and specifications, the board shall publish a notice two times, at least one week apart, with the second publication made at least seven days before the date the bids will be received, calling for sealed proposals for public work. [IC 36-1-12-4(b) (3)] The period of time between the date of the first publication and the date of receiving bids may not be more than six weeks. [IC 36-1-12-4(b) (5)] A bond or certified check shall be filed with each bid by a bidder in amount specified by the board. The amount may not be more than 10% of the contract price. The bond or certified check shall be made payable to the political subdivision. All checks of unsuccessful bidders shall be returned to them by the board upon selection of successful bidders. Checks of successful bidders shall be held until delivery of a performance bond. [IC 36-1-12-4.5]

There are additional requirements for projects over one hundred thousand dollars (\$100,000), such as the procurement of a payment bond and retainage. In all projects which are under the bid thresholds mentioned in the first paragraph, the board could solicit bids for such projects. If the board does not solicit bids, then the board shall invite quotes by mail from at least three (3) persons known to deal in the class of work proposed to be done.

MEAL EXPENSE ADVANCES

IC 5-11-10-1.6 allows cities and towns to make meal expense advances to city or town employees who will be traveling on official city or town business if the city or town fiscal body has adopted an ordinance allowing the advance payment. The ordinance must specify the maximum amount that may be paid in advance and specify the required invoices and other documentation that must be submitted by city or town employees. The ordinance must provide for reimbursement from the wages of city or town employees if the employees do not submit the required invoices and documentation.

STATE CALLED MEETINGS – TRAVEL EXPENSES

IC 5-11-14-1 states that a claim for reimbursement of travel expenses incurred while attending a state called meeting may not be denied by the body responsible for the approval of claim if the claim complies with IC 5-11-10-1.6 and IC 5-11-14-1.

ADDITIONAL EXCISE TAX JUDGMENTS

IC 9-18-2-1 states:

"Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person that:

- (1) Are subject to the motor vehicle excise tax under IC 6-6-5; and
- (2) Will be operated in Indiana...."

IC 9-18-2-40(b) states: "A person who violates this chapter commits a Class C infraction."

IC 9-18-2-41 states:

"(a) In addition to:

- (1) The penalty described under section 40 [IC 9-18-2-40] of this chapter; and
- (2) Any judgment assessed under IC 34-28-5 (or IC 34-4-32 before its repeal);

a person who violates section 1 [IC 9-18-2-1] of this chapter shall be assessed a judgment equal to the amount of excise tax due under IC 6-6-5 or IC 6-6-5.5 on the vehicle involved in the violation.

(b) The clerk of the court shall do the following:

- (1) Collect the additional judgment described in subsection (a) in an amount specified by a court order.
- (2) Transfer the additional judgment to the county auditor on a calendar year basis.

(c) The auditor shall distribute the judgments described under subsection (b) to law enforcement agencies, including the state police department, responsible for issuing citations to enforce section 1 [IC 9-18-2-1] of this chapter.

(d) The percentage of funds distributed to a law enforcement agency under subsection (c):

- (1) Must equal the percentage of the total number of citations issued by the law enforcement agency for the purpose of enforcing section 1 of this chapter during the applicable year; and
- (2) May be used for the following:
 - (A) Any law enforcement purpose.
 - (B) Contributions to the pension fund of the law enforcement agency."

ADDITIONAL EXCISE TAX JUDGMENTS – (Continued)

To facilitate the handling and allocation of these fees under IC 9-18-2-41, the clerk should use General Form No. 367 (1984) entitled "Clerk's Report to Auditor of Additional Judgment for Excise Tax" (see copy of this form on Page 11). In using this form, the following procedure should be observed:

The clerk of the court which collects these penalties must include a memorandum with the remittance which shows the number of citations filed in the court by each law enforcement agency for failure to timely register a motor vehicle. Such memorandum could be as follows:

<u>Law Enforcement Agency</u>	<u>Number of Citations</u>
_____ County Sheriff	6
Urban City Police	2
Best Town Marshal	<u>2</u>
Total	<u>10</u>

PRESCRIBED BY STATE BOARD OF ACCOUNTS

CLERK'S REPORT TO AUDITOR
OF ADDITIONAL JUDGMENTS FOR EXCISE TAX

TO THE AUDITOR OF _____ COUNTY, INDIANA

COLLECTIONS FOR MONTH _____, ____

LAW ENFORCEMENT AGENCY	NO. OF CITATIONS ISSUED	AMOUNT COLLECTED
STATE POLICE		
COUNTY SHERIFF		
CITY OF _____ POLICE		
CITY OF _____ POLICE		
TOWN MARSHAL - TOWN OF _____		
TOTALS		\$

I SWEAR THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT OF ALL COSTS AND FEES BELONGING TO THE ABOVE AGENCIES AND DEPARTMENTS COLLECTED BY ME FOR THE PERIOD SHOWN.

STATE OF INDIANA _____ COUNTY, SS

IC 9-18-2-41 PROVIDES THAT THE CLERK OF THE COURT SHALL ON A CALENDAR YEAR BASIS TRANSFER ADDITIONAL JUDGMENTS COLLECTED UNDER IC 9-18-2-1 TO THE COUNTY AUDITOR WHO SHALL DISTRIBUTE THE FUNDS TO THE LAW ENFORCEMENT AGENCIES RESPONSIBLE FOR ISSUING CITATIONS. THE PERCENTAGE OF FUNDS DISTRIBUTED TO A LAW ENFORCEMENT AGENCY EQUALS THE TOTAL NUMBER OF CITATIONS ISSUED BY THE LAW ENFORCEMENT AGENCY. THE STATE BOARD OF ACCOUNTS RECOMMENDS MONTHLY FILING OF THIS FORM TO ELIMINATE THE NECESSITY OF CARRYING THESE ITEMS IN TRUST.

_____ COURT

CLERK OF THE COURT

INDEX TO BULLETINS

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The articles appearing in the year 1996 and prior issues have been revised and reprinted in later issues. Also, articles revised in later issues that are obsolete have been omitted from the index. Please discard all issues prior to March 1997.

BANK/CREDIT CARD PAYMENTS TO CITY AND TOWN COURTS

IC 33-37-6-1 states, as follows:

"This chapter applies to any transaction in which:

- (1) the clerk is required to collect money from a person, including:
 - (A) bail;
 - (B) a fine;
 - (C) a civil penalty;
 - (D) a court fee, court cost, or user fee imposed by the court; or
 - (E) a fee for the preparation, duplication, or transmission of a document; and
- (2) the person pays the clerk by means of a credit card, debit card, charge card, or similar method."

IC 33-37-6-2 states, as follows:

"(a) A payment made under this chapter does not finally discharge the person's liability, and the person has not paid the liability, and the person has not paid the liability until the clerk receives payment or credit from the institution responsible for making the payment or credit.

(b) The clerk may contract with a bank or credit card vendor for acceptance of bank or credit cards. Subject to subsection (d), if there is a vendor transaction charge or discount fee, whether billed to the clerk or charged directly to the clerk's account, the clerk shall collect a fee from the person using the bank card or credit card. The fee collected under this section is a permitted additional charge to the money the clerk is required to collect under section 1 (1) of this chapter.

BANK/CREDIT CARD PAYMENTS TO CITY AND TOWN COURTS – (Continued)

(c) Subject to subsection (d), the clerk may contract with a payment processing company, which may collect a transaction fee from the person using the bank card or credit card. The fee collected under this section is a permitted additional charge to the money the clerk is required to collect under section 1 (1) of this chapter.

(d) The clerk shall collect and deposit in the appropriate fund an amount not less than the amount the clerk would collect and deposit if the clerk received payment by a means other than a bank card or credit card."

APPROPRIATIONS FOR FEDERAL AND STATE FUNDS

When funds are provided by the federal government either directly to a city or town or through a state agency for any program or project, the following procedures should be followed:

Advance Grants. Advance grants should be handled as follows:

1. Where funds are "advanced" directly to the city or town by the federal or state government for a specific purpose prior to making any disbursements by the city or town, the money should be placed in a separate project fund and disbursements subsequently made from that fund. No appropriation of the federal or state funds is required.
2. Where federal funds are "advanced" to the city or town through a state agency or department with no state funds added thereto prior to making any distributions, the money should be placed in a separate project fund and subsequent disbursements made from that fund. No appropriation of the federal funds is required.
3. Where federal funds are "advanced" to the city or town by a state agency or department and state funds are included along with the federal funds in one check or voucher and the funds are for a specific purpose, the money should be placed in a separate project fund and disbursements made from that fund. Appropriation(s) must be obtained for the combined total (i.e., federal and state) prior to any disbursement being made from that project fund.

Reimbursement Grants. Reimbursement grants should be handled as follows:

Where a federal or state grant provides for payments to be made directly to a city or town on a "reimbursement" basis after payment of expenses by the city or town, the entire amount of the federal program or project may be appropriated by the city or town without using the additional appropriation procedures under IC 6-1.1-18-5, if the funds are provided or designated by the state a federal government as a reimbursement of expenditures. [IC 6-1.1-18-7.5]

No separate fund for the project or program is required unless the terms of the grant require one.

APPROPRIATIONS FOR FEDERAL AND STATE FUNDS – (Continued)

Matching Grants. Matching Grants should be handled as follows:

When a federal grant or program requires expenditures or "matching" funds to be provided from city or town funds, an appropriation must be obtained for the amount of such expenditures or local matching funds. Individual program requirements will dictate whether an appropriation should be set out in the terms and conditions entered into between the city or town and officials of the federal agency.

Summary. To summarize, no appropriations of federal or state funds are necessary: (1) when advanced directly from the federal or state government for a specific purpose prior to making disbursements, and the money is placed in a separate project fund with disbursement made from that fund; or (2) when federal funds are received in advance through a state agency for a specific purpose prior to making disbursements and the money is placed in a separate project fund with disbursements made from that fund and there is no state match.

Please keep in mind, if the city or town wishes to obtain an appropriation for all funds to be spent (i.e., federal, state, and local), there is certainly no prohibition in state statutes.

HAPPY HOLIDAYS

We would like to take this opportunity to look back on the many warm associations that we have been blessed with. The outstanding cooperation and help that we are extended by city and town officials is truly appreciated.

From each of us and our staff to each of you and your staff, we send our best wishes for the holidays and our sincere wishes for a prosperous and happy New Year.

Bruce Hartman
State Examiner

Mike Bozynski
Deputy State Examiner

Paul D. Joyce
Deputy State Examiner